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E V I D E N C E,

(As taken down in Court)

I N T H E
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W H E R E I N

The Rt. Hon. *John*, Earl of SANDWICH, was Plaintiff,

A N D

Montagu
J. M I L L E R, Defendant,

B E F O R E

W I L L I A M, Lord MANSFIELD,

And a SPECIAL JURY,

In the Court of KING's BENCH, July 8, 1773.

L O N D O N:

Printed for GEORGE KEARSLEY, No. 46, Fleet-Street;
J. BEW, No. 28, Paternoster-Row; and the Pamphlet
Shops at the Royal Exchange.

[Price ONE SHILLING.]

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In Banco Regis. *July 8, 1773.*

The Right Hon. JOHN, Earl } Plaintiff.
of SANDWICH, }
J. MILLER, - - Defendant.

Gentlemen of the Special Jury.

Thomas Hosier, Esq.	Peter Earnshaw, Esq.
Richard Lateward, Esq.	Edward Gordon, Esq.
William Baker, Esq.	John Debonair, Esq.
Richara Bulstrode, Esq.	Charles Merrey, Esq.
Stephen Cote, Esq.	John Spiller, Esq.
Peter Lewis Peirin, Esq.	James Anderson, Esq.

The Cause was opened by Mr. Buller and the
Attorney-General.

A Summons to Parliament, directed to Lord Sandwich;
The King's Commission, appointing him First Lord Com-
missioner of the Admiralty, produced;
His Titles of Privy Counsellor, &c. &c. admitted.

James Wartel, sworn.

Examined by the Plaintiff's Counsel.

Q. **L**OOK at that paper: have you seen
(*shewing him a news-paper*) that paper
before?

B

A. Yes,

A. Yes, Sir.

Q. Where did you first see that?

A. Why, I bought it at Mr. Miller's.

Q. What business is he?

A. A printer, Sir.

Q. A printer, did you say?

A. Yes, Sir.

Q. Where does he live?

A. In the Queen's-head-passage, Pater-noster-row.

Q. Has he a shop there?

A. I don't know what you may call it; there is a board hangs out for the sale of papers.

Q. Is that his printing-office, Sir?

A. Yes, Sir, I think it is.

Q. You bought it there?

A. I did, Sir.

Q. Of the servant, or the master?

A. Sometimes one, sometimes the other. I think he was a lusty man.

Q. Who did you buy that paper of; his servant or himself?

A. A lusty man—in the place where they sell the papers.

Q. Was that a servant in the place where they sell the papers?

A. He is a servant so far as I know—I did not buy it of Mr. Miller, I bought it of his servant.

Cross-Examination.

Q. You did not see Mr. Miller at the time you bought that paper?

A. No,

A. No, I seldom saw him.

Q. What are you?

A. I am a vintner by profession.

Q. What occasioned your going to Mr. Miller's?

A. Sir, I am engaged by the Messenger of the Press, and I fetch them for the amusement of myself. I fetch them every morning and evening.

Q. You are a vintner you say, Sir—where do you live?

A. I live at Temple-bar.

Q. What house do you keep there?

A. I can resolve you no more than I bought the paper at Mr. Miller's.

A Gentleman of the Jury. You can resolve what house you keep.

Mr. Serjeant Glynn. You must answer that—what house is it?

A. Yes, Sir, I can tell you where I live; but what I am called here for is to swear to the paper*.

Mr. Wallace. You are called to answer every question that can be put to you——This is a paper you bought at the shop you go to buy papers at every day?

* We shall only observe in this place, as we shall speak of this very extraordinary witness, James Wartel, in another, that he would not inform the Court, where and in what house he lived, though repeatedly required to do so; but when asked that question, he tells the Court, he was called there to swear to the paper: but the reason why he refused to acquaint the Court in what house he lived, and how conscientiously he did swear to the paper, will be further explained.

A. Yes, morning and evening, Sir, for the use of the Messenger of the Press.

Q. How long have you gone to Miller's to buy papers?

A. About two years and an half.

Q. At his place?

A. Yes, at his place and others.

[*The Letter signed Alfred, read out of the London Evening-Post, from January the 30th to February the 2d, 1773.*]

Mr. Wallace. Here, Wartel, look at that paper—(*shewing him another paper*).

Q. When did you buy that?

A. When did I buy this? I don't buy all the papers.

Q. But look at that; your name is at the bottom of it:—when did you buy that?

A. The 16th of February.

Q. Where did you buy it?

A. At Mr. Miller's.

Mr. Wallace. I read it for this paragraph—here is another letter directed to Lord Sandwich.

[*The Counsel for the Defendant at first objected to its being read, but afterwards agreed it might be read.*]

Counsel. Read it.—This is a part of a letter addressed to Lord Sandwich; Saturday, Feb. 13, to Tuesday, Feb. 16, 1773, signed Alfred.

“I re-

" I remember my engagement to the public, nor shall they be disappointed.—My Lord, the charge I brought against you with respect to the sale of a seat at the Navy-Office, remains uncontradicted. I shall forbear to make any further comment upon it; let every man draw his own conclusion."

Charles Beresford, sworn.

Examined by Plaintiff's Counsel.

Q. Mr. Beresford, you know Mr. Miller; you belong to the Stamp-office?

A. I do, Sir.

Q. You know Mr. Miller?

A. I cannot say that I know him.

Q. What did you come here to prove?

A. The execution of a bond, Sir.

Q. Are you a witness to it?

A. Yes, Sir, a witness.

Q. Did you see it executed by Mr. Miller?

A. Yes, Sir.

Q. The publishers give security for the stamps?

A. Yes.

[Part of the bond read, to shew by whom given, and for what purpose.]

Robert Harris, sworn.

Examined by Plaintiff's Counsel.

Q. You belong to the Stamp-office?

A. Yes, Sir.

Q. Do

Q. Do you know of any allowance made for the stamps of unfold papers of the London Evening-Post?

A. Yes, Sir, there is.

Q. Are any of those papers here?

A. Yes, Sir.

Q. Produce the paper of the 2d of February, 1773.

A large parcel produced by Mr. Harris.

Q. Those are papers for which Mr. Miller had an allowance, for not being fold, at the Stamp-office?

A. They are, Sir.

Q. Look at the file of papers, and see if that very paper of the 2d of February is there, and whether the letter is in it.

A. It is*.

Mr.

* It is necessary to observe in this place, that as my Lord Sandwich charged J. Miller in his Declaration with both printing and publishing the Letter of Alfred, so it was necessary for him to prove, that he did both print and publish it: Let us then see in what manner the Defendant's printing and publishing that paper was proved. To prove his publication of it, one James wartel was examined, who called himself a victuier, and said, he was employed by the Messenger of the Press to buy newspapers; but when he was asked where and in what house he lived, he made no answer; but being asked again in what house he lived, he would not tell, but replied, *he was called there to swear to the paper*: and he gave his evidence in such a wretched and suspicious manner, that no persons present could in their hearts believe what he swore. In this shameful manner the Defendant's publication of the paper was proved. Let us now see, how the Defendant's printing of it was proved, and we shall find, that his printing of it was proved in a more shameful way, than even his publishing of it; for it appeared that one of the *unfold* papers at the Stamp-office, mentioned by the witness, Robert Harris, and belonging to J. Miller, and which ought to have been returned to him,

was

Mr. *Jonas Hanway*, sworn.

Examined by Plaintiff's Counsel.

Q. You are brother, Sir, of the late Mr. Thomas Hanway, a Commissioner of the Navy?

A. Yes, Sir.

Q. You can tell us the day upon which he died?

A. He died, Sir, the 8th of October last.

Charles Wright, sworn.

Examined by Plaintiff's Counsel.

Q. Do you know that hand-writing of Lord Sandwich, and the two other gentlemen, the three Lords Commissioners of the Admiralty?

A. Yes, it is their hand-writing—a letter signed by Lord Sandwich, A. Harvey, and T. Bradshaw, dated 8th October, 1772, directed to Mr. Attorney-General to prepare a Patent, appointing Charles Marsh, Esq; to the Office of Commissioner of the Navy, in the room of Commissioner Hanway.

was purloined, out of his bundle of papers, and produced in Court as evidence of his printing it. Now will any man say, that a paper of the Defendant, thus fraudulently obtained, was a fair and honest method of proving his printing of it? and does not the proving of the Defendant's printing the paper by the assistance of the Stamp-office, sufficiently shew, that *the Ministry were at the bottom of this prosecution?*

Cross-

Cross-Examination by Mr. Davenport.

Q. Do you speak to the hand-writing of these Commissioners?

A. Yes.

Q. Did you see them write that?

A. I did not see them write that.

Q. Whether that is the real day, the 8th of October, that they signed it, you cannot tell?

A. No, Sir, I cannot.

Mr. Gordon, sworn.

Examined by Plaintiff's Counsel.

Q. Look at that letter, Sir: when did you receive it?

A. I received it upon the 9th of October.

Q. I see the post-mark is the 8th?

A. Yes, the post-mark is the 8th.

Q. That is a letter to this gentleman, shewing that he was appointed to the Victualling-office, in the room of Mr. Marsh, which he received the 9th, the post-mark is the 8th?

*The Letter read. Directed to Wm. Gordon,
Esq; Rochester.*

Court.

Court. That is to prove the warrant was not ante-dated—as here is a letter dated the same day.

Plaintiff's Counsel. Here is the warrant appointing him the same day?

Mr. Recorder then entered on his Defence, which, on account of its great length, is omitted, except the following few pertinent remarks*.

Captain

* He begged in the course of his defence, to submit to the jury for a moment, the partiality of the evidence, upon which they were expected to give their verdict, and a verdict attended with such ruinous consequences to the defendant. "A man is produced to you here, whom I believe every person who saw the appearance of, heard his language, and commented upon his behaviour, must have thought a disgrace to the power that employs him; and upon this man's testimony, who *shamefully hangs back*, in answer to the most *simple* and *innocent* question, you are to be convinced that Mr. Miller is the person out of whose office this paper came."

He observed in another place, "after you have formed no more than a conviction that he is the printer, and did unfortunately and inadvertently, suffer to be inserted that passage as appeared in the paper reflecting upon such a character as this, you are to give a verdict to ruin the man, and upon a motive of regard and tenderness to the press:—Gentlemen, is that the right way of taking it? if this is the measure and rule of justice by which cases relative to printers are to be tried; if they are to be answerable upon such kind of evidence as is now produced to you, and answerable as fully as if they were known to be the authors and writers of the papers themselves;—and if, upon the circumstance of title, rank and situation of the person, no damages are too much for them—what printer, what man would venture to exercise the profession of a printer? What man would dare to admit into a paper any thing upon public concerns, because the offence is to be exaggerated, as it respects the conduct of a man in a public situation?—There is, then, an end of the discussion of all public and political questions, when

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Captain Luttrell, sworn.

My Lord, I think it necessary to tell your Lordship, I am subpoenaed as evidence upon this

at the hazard and peril of ruin the printer or the publisher is to be careful to look and see that no paper finds any passage, or finds any admission into his publication, that contains the name of any great man in the state, any peer, or any person entitled upon the statute of *Scandalum Magnatum* to bring an action like this. Gentlemen, who will hold a doubt about the case of Titus Oates, and the case of the worthy Sheriff of London, who suffered ruin, because he charged James II. with popery?—an idle, ridiculous charge.—It was said by the gentleman at the bar, *let this have a mark set upon it,—let this be to terrify them from an attempt of this sort;—*then the press will be that tame, passive, inoffensive thing, that every minister of state, every corrupt one I am sure (*I will not talk of the present*) will be glad to see the press reduced to that condition by your verdict—you are desired to do it—and to two verdicts marked and stigmatized by the mischievous malevolence and constitution of those times, you are to add the verdict of twelve respectable gentlemen here,—you are to give a sanction to that practice that is condemned by the age in which the then promoters of it lived, as was the character of the men that gave the verdicts—and you are desired to add what will be a sanction and authority indeed, and a precedent for a future jury to follow:—Precedents, however, such as I trust no honest jury ever will follow.”

In the course of his harangue he said, —“If I may be allowed to attend to private report, Lord Sandwich is not a man that ought to *complain* of *abuse* of his *character*;—Lord Sandwich is not a man for which juries are to set a *precedent* of *ruining* an unguarded and inadvertent printer. —We all know, that *abuse* has been *liberally dealt* out by *their* favours upon the best and greatest men.”

In another place he took notice, that “the charge against Mr. Miller, is said to be an uncommon and a singular case; that attacks

this trial, by Miller. Without my knowledge, he has thought proper to make use of my name.

I don't

tacks have been made by anonymous writers, disavowed when made; they have been made upon no foundation, but that of calumny, which has died away; but this is the crime, the defendant stands forth, and says he is justified in having published what he did; I shall submit it to you, that the defendant is justifiable, and that he deserves no blame in publishing what he did. I say, gentlemen, I have grounds to support me in submitting that to you.——

He observed, it was not a groundless charge,—it was not conceived in malice, without any foundation whatsoever—the defendant submits it to you, that there is a matter to disclose to you in this place, that justifies him in having wrote what he did.——

The charge is, *That a messenger was sent to Captain Luttrell, with an offer of a vacant place of Commissioner of the Navy, in case he would advance 2000*l.* a vacant place of trust in the Naval department; the noble Lord being at the head of that department, is called upon therefore in the public papers, to vindicate himself from an inference that might arise from such a negotiation as he had entered into, or was supposed to have entered into upon the subject, which it was only in his power ever to make good; the inference that arose from that, affecting the noble Lord's character, must undoubtedly affect the mind of the writer, and must affect every person till answered. Therefore, this being the charge, the answer to it is, That there was such a transaction; that a messenger was sent; that that messenger came with this offer, and if he came with the offer, if the person had not the authority to make that offer good, he was deceiving the person to whom he made the offer, but in a more considerable degree abusing the name and character of the noble Lord he was alluding to. Gentlemen, this is our answer to it; we have justified in this way, that a messenger was sent, the paper goes no further, the paper charges no more than a messenger was sent in the dead of night; what comment that affords you will judge; it is sufficient for me to say, and I am authorized from my instructions to say, that was the truth; a messenger was sent to tender this place upon such terms to Captain Luttrell;—that Captain Luttrell did, as he ought to do, reject the offer;—the person that made this offer, was a Navy agent too. Captain Luttrell's objection was, that he*

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would

I don't think myself at all interested in the event of this cause, farther than vindicating my own conduct.

would not obtain that by corruption, which should be the reward of honourable services. If that had not restrained him from entering into the negotiation, with whom would any body suppose he was to complete the negotiation?—not with Cortes, the Navy Agent, who had no authority to sell for himself, nor will any body presume otherwise than that he was the agent for the noble Lord that presided in the Navy department, and who alone had the offering of that place. After this offer was made by the noble Lord, this paper appeared, the noble Lord was apprized of it, the report was spread abroad, however long antecedent to the appearance of this paper, and gained general ground; was the conversation of companies in general; and I trust and believe before this trial is over, you will be convinced the noble Lord knew it; the noble Lord had seen Captain Luttrell; the noble Lord I trust will be found never to have entered into any expostulation with Captain Luttrell about it; that Cortes was the professed agent and negociator, and did make this offer, the noble Lord had all the reason in the world to think, but no notice was then taken, no notice to this hour is taken of that person. I submit it to you, gentlemen, that when this circumstance appears, *it is a justification*, and justifies all that the author has asserted in this paper; and if my Lord Sandwich has, from what has been offered to you now, proved his being so quick and expeditious in bestowing this place, it is an answer to the vindication; if it clears him, I congratulate the noble Lord upon it, but I wonder much what could be his motive for so long suppressing such a vindication; if it is from his aversion to news papers, and the particular tenderness and delicacy of Lord Sandwich, what restrained his Lordship from calling to a public account persons who had acted thus, and from entering into expostulation with them; stating how far the story went, and then exhibiting to the public, in vindication of himself, that which he now insists he is in possession of? I say, what hindered it; if all these things furnish an inference against him, whether they conclude his guilt or conviction, or no, is not the author of this paper justifiable, for that he has stated no more than the transaction? the inference is what he made, and what every man would make, from the transaction.

If the noble Lord had been so exceedingly anxious for the vindication of his character; if he so much desired to stand right in

conduct. I don't think myself directly or indirectly concerned in any transaction relative to
Lord

in the common opinion of the public, you will agree with me, that he has long neglected it; and he has not now hit upon the right expedient for vindicating his character. What are the motives that makes this doubtful, that has given a foundation to the stain upon his public character, that is represented to be so exceedingly injured? What are the motives that restrained the noble Lord from entering upon that vindication? If it furnished inferences against the noble Lord, can he blame it? Does he not by his own conduct give testimony to it? Without insisting, therefore, that the noble Lord is guilty, is it not sufficient for the printer of the paper to say, *I have printed no more than truth?* The inference that follows from it is such as every man would make; and the noble Lord who is affected by it, has not taken the natural and proper means to confute such inference, and to vindicate his character. If he had done that, why did he not bring to public justice, as an example, the man who by foul practices and impudent abuse upon great names, has brought such a stain upon the noble Lord at the head of the administration of the Naval affairs of this kingdom? If the charge goes so high as not only to affect the noble Lord in his private, but in his public character, and the facts stated are for his private and public character, for which you are desired thus vindictively to interpose; what excuse has the noble Lord to make that he has not brought this Cortes to punishment,—and that he suffers Cortes to go abroad, exercising his functions, without calling him to an explanation? He has had nothing of an explanation from Captain Luttrell; he has never called for an explanation; if he had, he might have traced it to Cortes, the man that so used his name. If a person, without authority, enters upon a corrupt and disgraceful negociation, and by that means brings slanders upon a great name he is no wise authorized to do, he is indeed a subject of public justice, he deserves punishment indeed; and when the arguments are used for going in the ordinary line of private reparation, it might have been against Cortes; he is the person upon whom the noble Lord should have poured the vengeance due to his injured character, and not against a public printer, whose offence, at most, was inadvertence, allowing every thing to be satisfactorily proved against

Lord Sandwich; and I desire to inform your Lordship and the Court, that I came here with
a total

against him. He was the person too who was to suffer in repute from the fountain of this foul report, who could be in the least degree presumed to have it in his power to verify and prove the truth of it. This man, who is the printer only, is singled out for the vindication of that character for which the action is brought; and this man, this Cortes, who used the name of the noble Lord, (he is the *author and inventor* of this calumny, as I now insist upon, and the man who ought to be punished, even for being the agent of bringing a reproach of so criminal a kind, and the man that has brought a scandal upon the great names) walks about unnoticed, and exercises a trust even at that board at which the noble Lord presides: he is not brought before you. If upon that kind of conduct opinions prevailed to the prejudice of his character; if the noble Lord relinquishes this prosecution; if the noble Lord brings that criminal before you, he would have it in his power to prove every thing. If he puts it home to the man to shew he had authority to do it, and he is well armed with inference; if he can prove that he had no such authority to have abused his name, the noble Lord would then have an opportunity of vindicating his character in a discussion of this sort: But he calls upon the printer, who has unguardedly put in the letter; he has not called upon him to produce the author in the usual way, but against the very function and profession of a printer is this action levelled; he has not given him those usual means of justification, which men are allowed in that profession, and in a way in which is usual for men who seek for redress of character in the courts of justice; they always demand first who are the authors, before they attack the unwary and unguarded communicators of such kind of reports to the public; they have not done that here, but brought it against the printer, who has not had it in his power, like Cortes, to vindicate from such imputation the noble Lord's character. *You do not vindicate it by such an action as this, if you give 20,000*l.* damages against the printer; you do not silence the reports, nor alter the opinions of the public; you do not confute the inferences that arise from a transaction of this sort.* I will venture to assert, Cortes is punishable for it, if the noble Lord thinks proper to do it. It would be unreasonable to a great degree to think they were not well founded

a total indifference between the parties, and determined to keep to what I have really said.

Mr. Attorney-General. If you please I will desire Capt. Luttrell to speak more distinctly to a thing he has just now thrown out. Does he mean

founded inferences against the noble Lord, when he is restrained from doing it by motives not much to his honour. The noble Lord may confute all this, it don't conclude against his character. I should be very sorry if it did. The vindication is open to him. He is fairly open to vindicate. "The charge is false, (it is said,) the charge is high; the noble Lord, if it is not totally confuted, if a suspicion lies upon his character, he is unfit and disqualified from every public trust, and loses all the esteem he ever had in the world."

These are the consequences that depend upon this vindication. *I am sorry the noble Lord is so circumstanced, that to do what he will, in this cause, he is not vindicated till he seeks satisfaction against this Certes, that has so abused his name, and ventured to transact a corrupt and sordid negotiation under the colour of such a name and authority as this. Till this is done, do what you will, the imputation must rest upon the noble Lord.* If the noble Lord neglects all those means of justification, has he any right to complain that a paper is published, from which inferences arise that may possibly be said to make to his disadvantage, and to the prejudice of his character? It is open to confutation whenever he will. If he neglects the means, and chuses rather to claim, even from the hands of a jury, the ruin of an unguarded printer, he chuses, that the minister of justice, that the sacred constitutional ministers of justice, a jury, should so far go out of their way to gratify the request and feelings of a noble Lord, as to pour ruin upon the head of an unguarded printer, when he himself gives countenance to the imputation, by not bringing before you the person, whom it was in his power to do. Gentlemen, we shall bring Captain Luttrell before you; then, I presume, the cause rests here;—the paper has made no conclusion. If by construction, any inference arises from it, it is an inference that must continue, and never will be silent, so long as the noble Lord acts in the manner he does, chusing rather to prosecute a printer, than bring the persons before you who are the authors of all the scandal and obliquity of his name, to a public examination.

mean to tell your Lordship and the Jury, he is to be at no part of the expence of the cause?

Capt. Luttrell. Upon my oath I am not. I have already told my Lord, upon my oath, I am not privy nor consulted in it. I knew nothing of it. I never saw it, 'till it appeared publicly in the papers. If that is not full enough, and if I can express myself more fully, I will endeavour to do it.

Mr. Davenport. Will you be so good, Sir, as to inform the Court concerning any application about being a Commissioner in the Navy?

Capt. Luttrell. My Lord, it is many months ago, the exact day I will not ascertain; it was a day or two previous to the death of Mr. Hanway, Mr. Cortes came down to my house in Hampshire,

Court. What time, Sir?

Capt. Luttrell. It was, as well as I can recollect, I will not be positive, my Lord, but I believe it was about nine o'clock, upon a Thursday; but the day of the month I don't recollect neither. He mentioned to me some money concerns, not relative to the matter, in negotiation, and he then asked me if I should like to be a Commissioner of the Navy? I told him no, I did not think I should. Because, he said, Mr. Hanway was at the point of death; that he could not recover; that his vacancy would be disposed of, and I might have it for 2000*l.* I told him that I was aware many difficulties must attend

attend such an appointment; that I had understood Mr. M^cKenzie, Mr. Gambier, and many other old Officers, were applying for those employments; that I was but a young Captain, and did not chuse to run the risk of being abused about it. Mr. Cort * then observed to me, *that Capt. Proby was to remain Commissioner of the Dock-yard at Chatham, that the vacancy would be filled up at the Navy-Board, and that it might be either given to an Officer or to a private Gentleman.* I told him, that, when I considered my particular situation, that was not the line of preferment I wished. He then asked me if I had no friend, whom I thought eligible, that would like the employment. I told him I believed I had, and that I would enquire about it. Here, my Lord, the conversation at that time ended between Mr. Cort and me; he returned to London, and I went to a neighbour, Capt. Saxon's. I told him—

Court. Did you ask him about any thing else?

Capt. Luttrell. My Lord, there was a con-

* It is necessary to observe in this place, that Mr. Cort informed Capt. Luttrell, that Capt. Proby was to remain Commissioner of the Dock-yard at Chatham, and that the vacancy, occasioned by the death of Mr. Hanway, would be filled up at the *Navy-Board*: Now, by this intelligence of Mr. Cort, it should seem that he knew what would be done in this matter at the *Navy-Board*, and consequently it was to be presumed, he had *proper* authority for making the offer of the place to Capt. Luttrell.

D

versation

versation afterwards; I was going to tell your Lordship the whole thing with Cort.

[The Attorney-General objects to its being evidence—that conversation.]

Court. I don't know yet what it is; there may be evidence from conversation, and some that is not evidence.

Capt. Luttrell. I mean to tell my own story, to shew your Lordship the story that has been reported did not come from me, if you have no objection. I went to Capt. Saxon,* and told him the nature of the offer made to me, and asked him how he thought himself disposed for it. He said, though he did not think it eligible for me to take it, it was for him, and he would give the 2000l. and asked if I believed the application would come in time. I said I believed it would. I said the Gentleman that came to me came from London that night, and did not stay with me more than half an hour, and was returned to London. I wrote to Cort, to let him know my friend would take it. When I received Cort's answer, I found another person was nominated.

* It is proper to remark here, that Capt. Luttrell believed that Mr. Cort had sufficient and proper authority for offering the place to sale to him, by his going to his friend Captain Saxon, and acquainting him therewith, and by Capt. Saxon's agreeing to give the two thousand pounds asked for it; and by Capt. Luttrell's writing to Mr. Cort, to let him know that his friend would give that sum of money for it.

Court.

Court. Did you write to Cort?

A. Yes, I wrote to Cort, and told him I had procured a friend who would give the 2000*l.* I did not mention Capt. Saxon's name about it. A few days after, I met accidentally Capt. D. I asked him if he had heard of Mr. Hanway's death. He answered, yes, he had heard it; and asked if I knew of the vacancy he had made, *for that he knew the price of a Commissioner was 2000*l.** Finding the story like to get abroad, I minuted it down; and I believe it is pretty minutely set down. I have, in general terms, acknowledged an offer of the sort made to me; but I never quoted any authority whatever. I had not demanded an explanation of Cort 'till I saw him afterwards. Cort is a respectable man, and a man of property. Mr. Cort afterwards said, the Rev. Mr. Parry was the man that made that offer; but he would not talk about that, unless to Lord Sandwich * privately. He said he believed it would turn out a Huntingdonshire negotiation.

Court. Give me that over again; you spoke it very fast; What was the conversation after-

* We shall observe in this place, that Mr. Cort, by his answer to Capt. Luttrell, believed, that the Rev. Mr. Roger Parry, who employed him to make the offer to Capt. Luttrell, had some authority for so doing from Lord Sandwich, because he tells him, that he would not talk about that, unless to Lord Sandwich *privately*.

wards with Cort after putting this down in writing?

Capt. Luttrell. Mr. Cort has since told me it was not at that time that —

Court. About what time? specify it.

A. My Lord, it was during the last sittings; the day I cannot recollect.

Court. Since the cause was in the paper?

A. Yes, my Lord, long enough since that. The person who employed him was the Rev. Mr. Parry; and that he was the person who authorised him to make that offer, and that he would avow having done so.

Court. That he, Cort, would avow it?

Capt. Luttrell. That Parry would avow having done so; but that he would not tell in what manner the money was to be applied, except to my Lord Sandwich privately, if he desired to hear it.

Court. If he desired to ask?

A. If he desired to hear; that was the expression.

Court. You said something about Huntingdonshire?

Capt. Luttrell. I observed to Mr. Cort, I apprehended it would require a fuller explanation from Mr. Parry: He said, then it would turn out a Huntingdonshire negotiation; that the Parson was—or that Mr. Parry—I am not sure whether he said Mr. Parry or the Parson—was rather pressing, for that he wrote to him first.

Mr. Attorney-General. Mr. Luttrell is now giving

giving evidence subsequent, as I apprehend, to that conversation.

Court. That he has been doing a great while without objection; he has given evidence to be sure of what you might have stopped—but you did not—He is giving evidence of what Cort said to him when the cause was in the paper.

Mr. Attorney-General. I did not mean to object to the conversation which Mr. Luttrell pretended, or said he had with Mr. Cort originally; but I did mean to object to any conversation subsequent to that.

Capt. Luttrell. I have sworn to it!

Court. I asked him particularly, and he fixed the time, while the cause was standing in the paper to be tried. You should call Cort and Parry to the transaction.

Capt. Luttrell. I was wishing to convince the Attorney-General I have no share in the business.

Mr. Attorney-General. I had no objection to what he said at first, which is a very different thing from any subsequent conversation; there is not a syllable of evidence in it.—If I had chose to have objected at first, I might.

Court. Yes, all of it is evidence, such as it is, liable to observation; the application to Cort is evidence; whether it comes up to the fact alledged in the justification is matter of observation, but that is evidence to be sure—What is said after the cause was in the paper, to be sure, is
not

not evidence without farther proofs.—What was said about Parry, they must call Parry to prove.

Mr. Dunning. No part of it is evidence, unless the conversation connects it with Lord Sandwich.

Mr. Davenport. Mr. Luttrell, I observe you treated with Cort as a person you thought could make a proposal to you that was well warranted. What is the nature of Mr. Cort's business?

Capt. Luttrell. Mr. Cort is an Agent; he has had a great deal of my money in his hands. At first he never quoted any body as his authority.

Q. Is he a Navy Agent employed in Navy business?

A. I don't know enough to answer that with certainty that he is an Agent for Navy business.

Court. Is he an Agent for Lord Sandwich?

A. Not that I know of—I never heard that he was—I cannot say positively.

Mr. Attorney-General. Do you know he is not?

Capt. Luttrell. So far as I know of, he is not. I can swear so far as the best of my belief, he is not an Agent for Lord Sandwich.

Mr. Davenport. Now I ask you, Mr. Luttrell, whether you did not attend at Lord Sandwich's levee long after this matter had transpired and was public?

A. I never did at his levee.

Q. Upon his Lordship?

A. I did.

Q. Did

Q. Did any thing there pass, or did his Lordship say any thing about this transaction?

A. He did not say any thing relative to this transaction.

Q. How long after this transaction was it that you waited upon his Lordship?

A. I cannot speak positively as to that; but it was since this transaction happened.

Mr. Attorney-General. After the publication of this libel?

A. Long after the publication of this paper.

Q. How long ago?

A. It might be above six weeks after.

Q. Upon this visit to his Lordship, soon after this paper being published, you had no conversation with him, nor he with you, upon this subject?

A. I never had any conversation with Lord Sandwich upon the subject.

Mr. Attorney-General. You saw him?

A. I saw him.

Q. Was there any particular reason for your visit at that time to his Lordship?

A. I had been informed indeed by my brother, that Lord Sandwich wanted to see me.

Mr. Davenport. I ask, Sir, whether the purpose of the visit was not to give him an opportunity of speaking to you upon the subject?

A. It was; for I had been told Lord Sandwich wanted to speak to me upon the subject.

Roger

Roger Parry sworn. Examined by Mr. Morgan.

Q. I believe, Sir, you have been in Court, and heard the evidence given by Capt. Luttrell; be so good as to give me an account of all you know of this matter.

Mr. Parry. I have heard but a very little of what Capt. Luttrell said.

*Court.** What do you know of Lord Sandwich's sending Cort to negotiate the sale of a place in the Navy-office, or any thing relative to it?

* We must in this place observe, that as Mr. Roger Parry, a Clergyman, was examined by desire of the Court, contrary to a resolution taken at a consultation of the defendant's Counsel, so the Court began his examination by asking him a general question, what he knew of Lord Sandwich's sending Mr. Cort to negotiate the sale of a place in the Navy-office, or any thing relative to it? And Mr. Parry's answer to that question was a general acquittal of Lord Sandwich from knowing any thing relative to the matter, or of being concerned at all in the offer: he said, that he employed Mr. Cort to negotiate the matter, and make the offer, at the desire of one Mrs. Brooke, a Clergyman's wife; and being asked what interest Mrs. Brooke had to make such offer, and whom she was connected with, he made no answer; but the question being repeated to him, he then answered, *It was not Lord Sandwich, nor any person connected with Lord Sandwich.* Now, does not this indirect answer of Mr. Parry shew he was very desirous of acquitting Lord Sandwich of the charge? But being asked again, if it was not Lord Sandwich, or any person connected with him, who it was? he then answered, that Mrs. Brooke told him, it was a *German* gentleman, who had some connections in the *Queen's* family: but being asked the name of this German gentleman, he made no answer; but the question being repeated to him, he said, he was not positive, and could not recollect right, but *believed* it was *Freidengburgh*, or some such name.

A. I know nothing relative to my Lord Sandwich being at all concerned in the affair.

Q. Pray, Sir, was Mr. Cort employed by you or your means?

A. I did apply to Mr. Cort from a friend of mine, to ask him if any such thing could be done; if any friend of his would give any money for an interest that might be procured in general.

Q. Now give me leave to ask you what place you had in view at the time you made the application?

A. I had no place whatever in view.

Q. When you made the next application what place had you in view?

A. I accidentally, in the month of August, was informed by mere accident, coming in a hackney coach, that Mr. Commissioner Hanway was very ill, and not likely to recover; upon that I acquainted the person that applied to me that Mr. Hanway was ill, and not likely to recover, and there was likely to be a vacancy of his place; and they asked me if I chose to mention that particular thing.

Q. Who was that?

A. A particular friend of mine.

Q. I must beg leave to ask this question: Who was that friend, male or female?

A. It was a lady.

Q. What was her name?

A. Her name was Brooke.

Q. Who is she?

A. She is the wife of a clergyman.

E

Q. Where

Q. Where does she live?

A. Upon my word I cannot answer that question at present.

Q. What is her husband?

A. He is a clergyman.

Q. What curacy has he?

A. He has a preferment in the city of Norwich.

Q. Where did Mr. Brooke live at this time?

A. Mrs. Brooke had lodgings in Bond-street—Mr. Brooke lived at Norwich.

Q. Let me ask you what was the reason that led you to this conversation with Mrs. Brooke?

A. Mrs. Brooke first applied to me, and said she had an interest she believed she could make use of, worth the while of any man of business that would make it worth her while to make use of that interest in their favour.

Q. Give me leave to ask you, if Mrs. Brooke told you what her interest was, and who she was connected with?

No answer.

Q. What was her interest, and who was she connected with?

A. It was not my Lord Sandwich, nor any person connected with Lord Sandwich.

Q. If not with Lord Sandwich, or any body connected with him, who was it?

A. Mrs. Brooke told me it was a German gentleman that had some connections with the Queen's family.*

* A gentleman in Court called out, "that they had better stop the evidence, for he had fixed it with the Q., and in the next place would fix it with his M——."

Mr. Dunning. It was not Mr. Breslaw, was it?

No answer.

Mr. Morgan. Now, Sir, give me leave to ask you the name of the German gentleman?

A. I am not positive I can recollect right—I believe it was Friedenburgh, or some such name.

Q. Now, Sir, did you ever see Mr. Friedenburgh upon this business?

A. No, Sir, I never saw any body but Mrs. Brooke—I was employed merely as a messenger and friend of that lady.

Q. Let me understand you—Mrs. Brooke made application to you?

A. Yes, Sir.

Q. Now, Sir, give me leave to ask you another question—Upon what terms was it proposed for this interest to be exerted?—What were the terms?

A. The terms she mentioned in general—if I might ask a man of business what might be got upon such an occasion.

Q. For this Commissioner's place?

A. For that at last.

Q. First, in general?

A. Yes, but for this place at last.

Q. Your application was to be to a man of business, to know what could be got for this place—that was the object?

A. Yes, Sir.

Q. Now, Sir, in consequence of this what did you do?

A. In consequence of this I went to Mr. Cort, and had converse with him upon it, and he said he thought it could not be worth any person's while that was a proper eligible person, to be at a greater expence than a couple of thousand pounds.

Q. That was Cort's opinion, was it?

A. Yes, Sir.

Q. What then, Sir, did he tell you he would apply to any persons?

A. To particular persons—I asked him if he could think of any body; he said he could not at that time, if he did he would let me know.

Q. Did he ever give you intelligence of having applied to Captain Lutterell?

A. I don't recollect that ever he did.

Q. Did not he ever communicate to you the success of his commission?

A. He never did—Before I had any converse with Mr. Cort upon the subject again, the place was disposed of—It was in the newspapers the place was disposed of.

Q. To whom was the place disposed of?

A. So far as the news-papers informed me?

Q. No—from your own knowledge—Had you any conversation afterwards with Mrs. Brooke about this subject?

A. No, never.

Q. Had you any conversation with any body else about it?

A. No.

Q. Give

Q. Give me leave to ask you another question—Are you personally known to Lord Sandwich?

A. I am not.

Court. Q. Don't you know him at all?

A. I should not know his Lordship were I to see him in court now.

Q. Give me leave to ask, whether you have any preferment from my Lord Sandwich, or by his means?

A. None.

Q. None?

A. None—I have told you so before—I am very much obliged to his Lordship if I have, and don't yet know it.

Court. Q. to Capt. Lutterell. Will you hand up the memorandum you spoke of?

Capt. Lutterell. I have not the memorandum, my Lord, but Capt. Paschal went with me to Mr. Cort, in order that there might be no mistake about it. Mr. Cort acknowledged the conversation the same as I related to you; the paper was delivered to Capt. Paschal, who has been in possession ever since.

Capt. Paschal. My papers are all at Greenwich, and that is with them. I had not time to go to Greenwich for them.

Capt. Lutterell. I clearly gave my reasons to your Lordship for having minuted it down.

Margaret Ray called.

Mr. Davenport. I have Margaret Ray in my brief.—I do not think it now necessary to call her.

[We

[We must here observe, that it was at first intended to have examined Mrs. Margaret Ray, who lived in Lord Sandwich's house, as a witness for Miller; and that she was subpoenaed, and did attend for that purpose; but she was not examined: It would, however, have been a very proper question to have asked of the Rev. Roger Parry, Whether he did not know, that Mrs. Brooke, who employed him to negotiate the sale of the place, was an acquaintance of, and very intimate with Mrs. Margaret Ray?]

The Attorney General, in a laboured speech, replied, which, as well as the Recorder's, is omitted, on account of their very great length.

Lord Chief Justice. Gentlemen of the Jury. This is an action brought by the Plaintiff against the Defendant for a defamatory Libel—the paper has been read, and the words are so open, that no doubt has been made at the bar concerning the meaning, and no doubt has been made at the bar whether this action is or is not competent, and that the Plaintiff is intitled to recover a verdict and damages for this defamation. A great stress (and very justly by the Council for the Plaintiff) has been laid upon the precise fact, as laid to the charge of the Plaintiff, and the subsequent justification of it upon record; and that is, that he being in the situation in which he is described, bargained, by his agent, for the sale of an office, which is really in the gift of the King; but which,

which, by virtue of the place in which he is, he has the recommendation, at least it is probable for him to have the recommendation, if it is not an absolute right.—Now that is a precise and specific charge of a particular fact, and it is justified as true upon record.—There is a distinction between criminal prosecutions, and actions in a criminal prosecution for a Libel. The truth or falshood of the charge is immaterial, and cannot be gone into in evidence, because the law says, That, if a man is guilty of any crime, or breach of office, or misdemeanor, there is a remedy open by the course of law of the kingdom, and that remedy is to be taken, and a private man is not to traduce, or censure extrajudicially his neighbour, and therefore, in a criminal prosecution, the truth or falshood of it never can be gone into in evidence one way or the other.—It is upon that distinction you are guilty of a crime in charging your neighbour with crimes he may be guilty of, as Felony, Treason, or Forgery, or any other crime, because if he is prosecuted for it, that is what ought to be done.—In the case of a civil action, it is different, and you will plainly see the reason.—When a man brings an action for a defamatory charge, if the charge be true the law says this—the Defendant has done wrong, and the Defendant may be punished criminally, but you are not injured, and you have no right to damages, because you are guilty—You are guilty of the offence, and therefore you that are guilty cannot complain,
and

and desire a satisfaction in damages for a man's saying that which is true of you ; and therefore upon that principle it is a bar to a recovery by the Plaintiff from his accepting any damages whatsoever.—A Plaintiff appears in an infamous light that comes into a court of justice and says, I am guilty of Felony, and yet let me have damages against the man that says I am guilty of Felony—No, says the law, you have done wrong, they should punish you for a crime against the state, but should not give you damages for being accused of the crime—Therefore in this cause they have put their great stress upon the fact, and upon the justification upon record ; for if the justification be true, it is a bar it is true inasmuch as it is within the justification ; but if the justification is false, it is a great aggravation of malice, and greatly enhances the slander.—In this case the charge is, That Lord Sandwich sent a messenger in the dead of the night to make an offer to a man of the sale of this office for 2000l.—They have taken upon them to justify that charge upon Lord Sandwich as true, and that his agent—(they point out the agent of and for Lord Sandwich to be one Henry Cort.)—I own from the first part of the opening of the Serjeant, I rather inclined to think they would not go into the proof of the justification from the manner of beginning ; but however that was never intended, for they have gone into the proof of it.—Now, Gentlemen, any objection in point of law to the evidence, may be waved by the parties,

ties, but to be sure, in point of law, they would have been right and warranted if they had said, the thing to be proved is the man who made the offer, whatever it be, was my Lord Sandwich's agent, because whatever a man says and does, without Lord Sandwich's private knowledge, or interfering, is no justification—It is no justification to say, I heard another man say the same slander—A justification to bar recovering is his own guilt—you are guilty, and therefore cannot recover damages; but the council did not make the objection, and I thought they did it judicially, meaning not to make the objection—when they come to the latter end, they seemed to change their mind, and make the objection.—They have not called Cort at all.

Mr. Cort. My Lord, I am here.

Lord Mansfield. They have not called you—Cort, is now present, but they have not called him, and in the justification he is asserted to be the agent that makes this corrupt offer. Well what does Mr. Lutterell say? Why Mr. Lutterell gives a very precise account, and he lays a very good foundation for believing that if Mr. Cort had been examined, he would have concurred with him, because he put it down in writing, and afterwards giving a reason why he did so, that he had talked with Mr. Cort, and they had settled what was the real truth of it, that there might be no controversy. What is the evidence Lutterell gives throughout the whole conversation.—Lord Sandwich's

name is never mentioned, and Corte never pretends that he comes from Lord Sandwich, or has any authority whatever from him—Why then what is implied from the evidence? If he had been the known agent of Lord Sandwich, or if the secretary of Lord Sandwich, nothing at all could have been said about it; but it comes out otherwise, because Lutterell says he is his agent—that his first business, was to talk about some money concerns, not relative to this matter.—Lutterell says, he don't know that he is, or ever was the agent of Lord Sandwich, and he very candidly says he believes he never was the agent of Lord Sandwich.—What is the next circumstance they go to?—Lutterell having given his account to Corte, it was natural to talk about it; and he said how came you to be asked about it? The answer is, Why the Rev. Mr. Parry said so and so about it.—Then Mr. Parry is called—Parry tells you a Mrs. Brooke, a clergyman's wife in London, had some interest with somebody, and desired he would look out for any person that would give money, or would make it worth her while to make use of that interest with this somebody for any place, without distinguishing it.—The first thing that occurred to him was a Commissioner's place of the Navy, being like to be vacant upon Hanway's death, to consider whether that place would do—He talks with Corte, and asks him what might be paid by an eligible person for it? Corte thinks an eligible person would not give more for it than 2000l.

—Then

—Then Mr. Parry is pressed to know who this person is, with whom Mrs. Brooke had interest? At first he *boggled*, then he said some German gentleman that had connections in the Queen's family—He was pressed still, and properly and rightly to speak out, as there should be no boggle in a Court of Justice, but all should be explained—then he says he believes it was one Friedenburgh, but he is not sure that is the name.—Then they ask him, Do you know any thing of Lord Sandwich? He says he knows so little of Lord Sandwich, that if he was standing here he should not know him, for that he does not know Lord Sandwich by sight, and he never had any connection with him.

Thus stands the justification.—Gentlemen, the next, and only remaining point I have to state to you, is with regard to the evidence of printing and publishing this libel—Now with regard to that, unless the witnesses you have heard swore false, you have very full evidence to satisfy you both one way and the other—They prove by the officers of the Stamp-Office he is the Printer of this Paper, and they have proved he was the Printer of this very number of the 30th of January to the 2d of February, by an allowance always given by the Stamp-Office for those papers that remain unfold; and they have proved that there was an allowance made to him for the unfold numbers of this very Paper from the 30th of January to the 2d of February.—Then the

Vintner Wartel proves he has been employed under the Messenger of the Press, who buys News-papers to furnish the offices with, and he has bought at this place the Papers so printed about two years and a half—He swears he bought it of a servant of the house, and the Paper itself so published and sold by his servant, is said to be printed by him, and unless you can suppose that evidence is false, it is very full evidence.—I will not say one word to you about the damages—You will take the Paper out with you—I am sure no observations on any side can occur to any man, which you are not capable of making yourselves—You will take the Paper out with you, and will consider all the circumstances of the case of a private or public nature.

REMARKS

R E M A R K S.

WE must observe, that though Mr. Attorney told the Jury in his reply, that the publication of Alfred's Letter by the Defendant was not a matter of a *public nature*, but of *private slander*, it is notorious, and no person, that hath any regard to truth, will deny, but that the charge in Alfred's Letter was totally of a public nature : for the charge in that letter was not against Lord Sandwich as a private man, but as the First Lord of the Admiralty, for offering a place of the Public, under his department, to sale. Mr. Attorney General's telling the Jury, it was a private slander, is therefore a remarkable instance, that lawyers, accustomed to speak, on any side, or for any question, *for fees*, will assert any thing to carry their cause, without the *least regard to truth*.

It is to be remarked, that Mr. Attorney General did again mislead the Jury, in order to induce them to give the Plaintiff great damages, by telling them, " it is the universal practice of all printers, to take an indemnity from the authors of Letters ;" when the truth is not so : and, in the present case, Mr. Miller was so far from having an indemnity from the author of Alfred's Letter, that he does not now know from whom that letter came : but it was his zeal and warmth for the service of the public, and his desire to detect and put a stop to such bad practices, that only induced him to publish that letter.

It is necessary to observe, that notwithstanding what Mr. Attorney General said, about " the Liberty of the Press not being concerned in the Cause," it is very evident, that this prosecution against Miller was commenced and carried on with the sole view of gagging and laying a restraint upon the Freedom of the Press : because the report of Lord Sandwich offering a place in the Navy Office to sale, did not arise from the publication of Alfred's Letter in the London Evening Post ; but it was the common talk of public companies for some weeks before that letter appeared in the paper, that an offer of the sale of such a place had been made by a Navy-Agent to Captain Lutterell ; and though this report had certainly reached the ears of Lord Sandwich,

Sandwich, yet his Lordship did not think fit to take any notice of the matter to Captain Lutterell, who waited upon his Lordship for the very purpose of giving him an opportunity of speaking to him about it. His Lordship says nothing to the person from whence this report arose, though he waits on him for that purpose; but falls upon the Printer, and prosecutes him with the utmost severity for publishing such report: and from hence it is clear, and beyond all contradiction, that the intention of the prosecution of Miller was to suppress and lay a restriction upon the Liberty of the Press: for the Freedom of the Press hath always been an eye-sore to evil ministers.

Mr. Attorney General's declaration to the Jury was expressly contrary to fact, and what was proved in the course of the trial: He said, "it is a cowardly malice, that is used by a man, who will not stand forth, as his accuser." When the fact was, that Captain Lutterell did stand forth, to whom the offer of the place was made, and did wait upon Lord Sandwich, who knew of the accusation, that had been reported of him, and from whom it came, in order that his Lordship might speak to him concerning such report; but that his Lordship said nothing at all to him about it.

It is necessary to take notice, that it was at first intended by the Defendant's council to have examined Mr. Cort as a witness; and that the Defendant was at no little trouble and expence to find out and get the said Mr. Cort served with a subpoena for that purpose, as he, though a man of considerable practice in his profession, had left his house and business, and kept himself secreted at Kentish Town for about a fortnight, before the Defendant's agent could find out where he was hidden, and get an opportunity of serving him with it; and that he was at last served with a subpoena by a stratagem: But, at a consultation of the Defendant's council, the night before the trial, it was agreed on by them, not to enter into the justification of the charge any further, than in examining Captain Lutterell to shew, that an offer of the sale of that place had been actually made to him by Mr. Cort, a Navy Agent, and who transacted that affair, as if he had had full authority from those, who could dispose of it; and to shew, that Captain Lutterell himself really believed, that Mr. Cort had such authority, because, not choosing to purchase the place himself, he applied to his friend Captain Saxon about the offer, who agreed to give

give the two thousand pounds required for it : and thereby to shew clearly to the court, that the report of Lord Sandwich's offering the place to sale, did not originate from the publication of Alfred's Letter in the London Evening Post, but was publicly known, and talked of for three weeks before that letter was published.—But notwithstanding it was so agreed on by the Defendant's council, yet Mr. Sergeant Glynn, being then called out of court upon some other affair, and Mr. Parry's name being mentioned by Captain Lutterell, as the person who had employed Mr. Cort to make the offer of the place to him, Lord Mansfield said, it was necessary to call Parry to prove what Captain Lutterell had said ; and by which the Defendant was, contrary to the resolution and opinion of his council, drawn further into the justification than was intended.

We shall not take the liberty of making any comment upon my Lord Mansfield's charge to the Jury ; but shall content ourselves with only submitting one single question to his Lordship's consideration, as we have very sufficient grounds for asking it.

2. Did, or did not, Lord M—— wait personally upon the Earl of Sandwich, before his Lordship had taken the resolution of bringing his action against Miller for the publication of Alfred's Letter, and most earnestly press his Lordship to commence a prosecution against him for it ?

F I N I S.

To the PUBLIC.

AS I have hitherto thought it my duty to be silent in my own person, relative to the late cause of action brought against me by Lord Sandwich, I hope the generous public, in whose cause I have ever exerted the utmost of my poor abilities, will the readier excuse me, for *now* offering to their consideration a subsequent state of that transaction, as well as asking their further protection and support.

The damages given in the verdict against me, it is well known, were TWO THOUSAND POUNDS—Damages which, from their *unprecedented magnitude*, I had no other way of avoiding, than at the expence of leaving my country and connections for ever. Previous, however, to so decisive a measure, I thought it a duty I owed you, as well as my family, to prevent it by every possible means in my power, consistent with a good citizen and an honest man; I therefore stated my case to his Lordship, acknowledging my readiness to pay his costs, together with the sum of one hundred pounds; praying, at the same time, to be excused the remainder. His Lordship was pleased to listen to some part of my request, and offered, in a letter to his attorney, to reduce the damages to five hundred pounds, with the payment of his costs, which amounted to 450*l.* more; and that such joint sums should be paid in a stipulated time. To this proposal of his Lordship I consented, and by the help of friends raised the money by bond, to enable me to pay it on the day appointed; but his Lordship's Solicitor did not receive it then, as it was thought proper to have a discharge under his Lordship's own hand, and which he was to get performed in a day or two. When my attorney waited upon his Lordship's Solicitor again to pay the money, he was informed by him, that his Lordship had ALTERED HIS MIND, and had resolved not to take any thing less than the Two Thousand Pounds. Astonished at this strange and unprecedented behaviour of his Lordship, I took the liberty of remonstrating to him about it in two successive letters (which are both set forth in the narrative of that negotiation) but to no sort of effect; for his Lordship was pleased to say, that the *lenity* he had shewn me, had been *greatly arraigned by his FRIENDS*, and that he was now determined to put the law in execution against me, if the whole sum was not immediately paid; his Lordship has been, *in this instance, punctual to his word*, for he has since thrown me into prison.

The debt now demanded by his Lordship is 2000*l.* which, I am not ashamed to confess, I am utterly incapable of discharging without assistance. In this hour of distress and difficulty, I am advised by some of my most respectable friends, who have generously promised to follow such advice with their support, to solicit a PUBLIC SUBSCRIPTION for my relief: This was early suggested to me, after the original damages were given against me, but the excessive largeness of the sum made me willing to try any expedient, rather than offer, in my opinion, so immodest a request. As the case now stands, I have no alternative—I am not without my feelings, but hope the necessity of the measure will apologize for the manner of application.

During my absence from business, which I had been obliged to give up, and in consequence of which I have suffered much both in mind and fortune, I have been a hearer of many invectives thrown out against the *Licentiousness of the Press!*—but, so far from shrinking from such, I join most cordially in the cry; for however I may have stood *forward* (which permit me here to say is my *Boast*, not my *Contrition*) in ringing the Alarm whenever the Rights of my Fellow Subjects were invaded, I have *never*, as far as I could possibly prevent, disturbed the repose of *Private Character*—the *Venality of Public Measures*, was alone the Object of my Attack, and upon that ground I flatter myself I have not disgraced the Name and Character of an ENGLISH PRINTER.

In respect to the consequences of the prosecution I now labour under, after the decision of the laws of my country, it does not become me to say much; yet I trust, both from the account of the trial, and the general tenour of my private and public character, I shall be precluded any *intentional criminality*;—so conscious am I myself of deserving this acquittal, that 'tis upon this principle *alone* I now solicit the countenance and support of that public, in whose service as I have hitherto been, so I ever shall be proud of acknowledging myself,

Their much obliged, and

Most obedient humble servant,

Fleet Prison, March 17, 1774.

J. MILLER.

The friends of Mr. Miller have sent books to receive Subscriptions at most of the Coffee-houses about the Exchange;—the Chapter Coffee-house, Pater-noster-Row;—the Parliament-street Coffee-house, in Westminster;—and the Somerset Coffee-house, in the Strand.—Books are also sent to most of the principal Coffee-houses in London and Westminster.—In a few days Bankers will be fixed on, to receive the monies arising from the Subscription.—The Printing-offices in the capital towns in England will also receive Subscriptions.

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A NARRATIVE of FACTS, relative to J. Miller's Application to Lord Sandwich, for the Remittal of the enormous Damages given him by a late Verdict, &c.

LORD SANDWICH having, *contrary to his word and express agreement* with J. Miller, charged him in execution with the *whole Damages* given his Lordship by a late Verdict, and thrown him into Prison for the same; J. Miller thinks it his duty to the Public to lay before them a true, exact, and impartial detail of all the circumstances relative to such agreement with his Lordship. He conceives it the more necessary because it will be evident to every person, by the sequel, that his Lordship did not depart from his Word and Honour in this affair through any cruelty or vindictiveness of disposition, but purely by *Command of Power*; and that the utter ruin of J. Miller hath been resolved on, with a manifest intention of *suppressing the Freedom of the Press*, in deterring all other Printers, by his punishment, from exercising the *Liberty of it for the service of the Public.*

(C O P Y .)

IN November last, the first application was made by me to Lord Sandwich for a remittal of the damages. I proposed the payment of his Lordship's costs, and presenting 100l. to a public charity, as an acknowledgment of his Lordship's generosity. When he was informed of the proposal by his Solicitor, Mr. Astley, his Lordship was pleased to say, that he "felt for the situation of my unhappy family; that he had no enmity to Mr. Miller, did not mean to be rigorous, but that the proposal did not reach the idea he had conceived of the sum that ought to be paid;"—however, it was suggested by his Lordship's Solicitor, that if 500l. was offered, his Lordship might be induced to favour me; and he added, that sum was expected should be paid, to serve as an *example to deter other printers.* Apprehending Lord Sandwich did not attend to, or was not aware of, the great sum which would fall upon me to pay, (agreeable to my own proposal) I immediately wrote to his Lordship to point out the amount—his Lordship's costs 450l. my own 200l. and the 100l. proposed to be given to a charity, in all 750l. At the same time I informed him, that the greatest part of the money must be raised upon my bond, bearing interest, and that it would require a great length of time to discharge so heavy an incumbrance; and submitted to his Lordship, whether the punishment was not adequate to his idea of the offence.

His Lordship, in answer, wrote to his Solicitor to this effect: [*my attorney saw the letter*] "that his determined resolution was to have 500l. and 450l. for his costs; if this was not complied with, he gave his Solicitor express directions to use every possible method to obtain the whole of the damages."

As it was impossible, by any means, to raise the money immediately, I requested of Lord Sandwich's Solicitor, to beg his Lordship would indulge me with six months for the payment. He wrote to Lord Sandwich, and received for answer, [*the letter came from Hinchinbroke, and was dated the 19th of December*] *that the money should be paid within a month.*

I was immediately made acquainted with his Lordship's final resolution, and lost no time in prevailing with my friends to assist in extricating me.

My attorney went out of town the 24th of December, and on his return found the following note: "Mr. Atley's compliments to Mr. M. informs him, that he is going out of town for the holidays, would be glad if Mr. M. would favour him with two or three lines by the penny-post; what he has done about Mr. Miller."

Jan. 4, in answer, my attorney wrote to Mr. Atley, "that Mr. Miller had submitted to Lord S.'s terms; that with the assistance of his friends, part of the money was raised, and that the remainder would be got by the 24th; and not recollecting the date of Lord Sandwich's letter, he added, that "he believed, *that was within the time limited by Lord Sandwich.*"

I was happy enough to raise the sum before the expiration of the time fixed by his Lordship—the greatest part upon my bond—and on the morning of the 20th of January, I waited on my attorney with the money, who informed me, "that the 24th was the day appointed in his letter to Mr. Atley to pay the money, and that, as he had not heard from Mr. Atley since, he took it for granted that day was agreeable, and he should then wait upon him." Accordingly, in the morning of the 24th, I again waited on my attorney with the money, who immediately after went to Mr. Atley, told him that he had the money *according to the appointment*, and the difficulty to the then paying and receiving of it, arose from his Lordship's Solicitor not having a receipt from Lord Sandwich himself. As the damages had been compounded, it was submitted by my attorney, whether it was not necessary to have a discharge under his Lordship's hand. Lord S.'s Solicitor was doubtful, but promised to see his Lordship as the next day, if his health would permit; if not, he would write to know his Lordship's pleasure:—my attorney assured him, *the money was ready* whenever he pleased to call for it.

My attorney heard nothing more (though he had sent to know if Mr. Atley had seen Lord S.) till the 29th, when he received

received a note from him, "that he had been laid up with the gout ever since he saw him; and had not received any directions from Lord Sandwich."

The matter rested in expectation of my attorney's daily hearing from Lord Sandwich's Solicitor. On the 9th of February, Mr. Astley sent word to my attorney, that he had been with Lord S. and was ready to receive him. He accordingly waited on Mr. Astley the 10th with the money, and he then learnt from Mr. Astley that he had seen Lord Sandwich the day preceding, and that his Lordship had informed him, "*that as the money had not been paid within the time limited by him, he would have nothing further to do with Mr. Miller.*"

Astonished and confounded at the seemingly wanton cruelty of this treatment, and judging it impossible that his Lordship, or any man, could be capable of such a departure from every principle of honour and honesty, the next day, the 11th, I wrote his Lordship the following letter :

" My Lord,

" I am much concerned that I should be under the necessity of again troubling your Lordship upon a business which I understood waited only the sanction of your Lordship's discharge. But as I am informed by Mr. Astley, (through my attorney) that your Lordship's sentiments are altered, *on account of the money not being paid within the time specified by your Lordship*, I must beg your Lordship's indulgence to state the facts, to shew, that NO IMPUTATION of *delay* can be attributed to me. Could I have conceived, or by the least intimation from Mr. Astley been informed, that the fixing the 24th [by my attorney] to make the settlement, would have occasioned any variation, my attorney might have settled with your Lordship's Solicitor on the 19th, as the kindness of my friends had furnished me with the money, and had thereby enabled me to have complied, literally, with your Lordship's pleasure."

In this letter was inclosed a state of the facts, as they are related preceding the above letter; as also the originals of three notes, which my attorney received from his Lordship's Solicitor, the substance of which are also mentioned.

The 13th or 14th of February, Lord Sandwich wrote to his Solicitor, and ordered him to take out a Capias.

Hardly crediting what I was told his Lordship had done, I could not be satisfied without again addressing his Lordship. I wrote to him on the 17th, of which the following is a part:

" My Lord,

" I cannot help still flattering myself that your Lordship's directions to Mr. Astley, to deprive me of my liberty, must be founded upon some misunderstanding, which my letter to
your

your Lordship of Friday last was not happy enough to remove, I must again entreat your Lordship's pardon for repeating, that wherever the blame of delay lies, no shadow of it, with the least justice, can be charged to my account. After my attorney had seen your Lordship's letter, in which your Lordship generously agreed to accept of 500l. in part of the fine, and 450l. for your Lordship's costs, I was particularly urgent with my different friends to extricate me, and a helpless family, from the distresses and difficulties into which they had been plunged. To do this I became obligated for the payment of seven hundred and fifty pounds, by bond, with interest at five per cent. and to discharge which will require five or six years. In the morning of the 19th or 20th I waited upon my attorney with the money, who informed me, that the 24th was the day fixed by appointment between Mr. Astley and himself; that he had, in his letter to Mr. Astley, appointed that day to make the settlement, and that the money was then to be paid; and on the morning of the 24th I punctually waited on my attorney with the money. Mr. Astley has been so candid as to acknowledge, that the circumstances I related in my letter to your Lordship, were stated agreeable to the facts. I trust then your Lordship, upon a reconsideration of this matter, will also do me the justice to acquit me of any negligence in complying with your Lordship's pleasure."

This letter was followed by two others, in one of which I offered to make a public confession to his Lordship.

On Sunday the 26th, I received his Lordship's ultimate answer. He said, "*that he was very glad I did not take him at his word; that when he made the promise to remit the greater part of the fine he was in the country; that on his arrival in town he found himself beset on all sides, and his lenity arraigned in the severest terms; that he was told by his friends, that he needed not to have prosecuted me, if he gave up the fine; and that for these reasons, he was determined to let the law take its course.*"

This is a true and exact narrative of the whole affair; and which is humbly submitted to the consideration of the public, by

Their much obliged,

And very humble servant,

Fleet-prison, March 16, 1774.

J. MILLER.

P. S. That his Lordship might not complain I acted dissingenuously, or clandestinely brought before the public the above state of facts, I sent him a copy of the narrative on Friday last. At the same time I informed his Lordship, that if any part of it was mistated, I should wait to stand corrected by his Lordship. No answer.